

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, AUGUST 3, 2005**

**C-1     CALL TO ORDER / ROLL CALL**

The City Council Closed Session meeting of August 3, 2005, was called to order by Mayor Pro Tempore Hitchcock at 6:32 p.m.

Present: Council Members – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman (arrived at 6:36 p.m.)

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Blackston

**C-2     ANNOUNCEMENT OF CLOSED SESSION**

- a) Actual litigation: Government Code §54956.9; two applications; Kristine Wisecarver v. City of Lodi; WCAB case numbers WCK 0071616 and WCK 0071617
- b) Actual litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al.; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- c) Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658
- d) Conference with legal counsel – anticipated litigation – significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; one case; pursuant to Government Code §54956.9(b)(3)(A) facts, due to not being known to potential plaintiffs, shall not be disclosed
- e) Actual litigation: Government Code §54956.9(a); one case; Fireman's Fund Insurance Company v. City of Lodi, et al., United States District Court, Eastern District of California Case No. CIV-S-98-1489 FCD JFM
- f) Actual litigation: Government Code §54956.9(a); one case; City of Lodi v. Michael C. Donovan, an individual; Envision Law Group, LLP, et al., San Joaquin County Superior Court, Case No. CV025569

**C-3     ADJOURN TO CLOSED SESSION**

At 6:32 p.m., Mayor Pro Tempore Hitchcock adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 7:00 p.m.

**C-4     RETURN TO OPEN SESSION / DISCLOSURE OF ACTION**

At 7:05 p.m., Mayor Beckman reconvened the City Council meeting, and City Attorney Schwabauer disclosed that there was no reportable action taken in closed session.

**A.     CALL TO ORDER / ROLL CALL**

The Regular City Council meeting of August 3, 2005, was called to order by Mayor Beckman at 7:05 p.m.

Present: Council Members – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Blackston

**B.     INVOCATION**

The invocation was given by Chaplain Barbara Taylor, Lodi Police Chaplains.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Beckman.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 Presentations – None

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E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Mayor Pro Tempore Hitchcock, Beckman second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of \$7,952,966.83.

E-2 The minutes of May 11, 2005 (Special Meeting), May 18, 2005 (Regular Meeting), July 12, 2005 (Shirtsleeve Session), and July 19, 2005 (Shirtsleeve Session) were approved as written.

E-3 Received report of sale of surplus equipment in the amount of \$38,947.

E-4 Received report on emergency air conditioning equipment replacement at Municipal Service Center Public Works office.

E-5 Approved the plans and specifications and authorized advertisement for bids for Turner Road Pump Station Modifications, Turner Road Underpass.

E-6 Approved the plans, drawings, and specifications and authorized advertisement for bids for the reconstruction of Killelea Substation, the addition of 60kV power circuit breakers at Industrial Substation, and procurement of two 60/12kV power transformers.

E-7 Adopted Resolution No. 2005-150 approving specifications, authorizing advertisement for bids for elevator services, and authorizing the City Manager to award or reject the contract up to \$13,500.

E-8 Adopted Resolution No. 2005-151 awarding the purchase of 20,000 feet of #1/0 medium-voltage ethylene propylene rubber insulated underground conductor to the low bidder, The Okonite Company, of San Ramon, CA, in the amount of \$32,109.50.

E-9 "Adopt resolution awarding the request for proposal for the installation and monitoring of an alarm system at Blakely Park pool complex, 1050 S. Stockton Street, to Matson Alarm Co., Inc., of Fresno, CA (\$13,530)" was **removed from the Consent Calendar and discussed following approval of the Consent Calendar**.

E-10 Approved the donation of retired gymnastic equipment to the Stockton Rotary.

E-11 Adopted Resolution No. 2005-152 accepting the improvements at 1745 West Kettleman Lane.

- E-12 Adopted Resolution No. 2005-153 authorizing the City Manager to execute a two-year extension option (for fiscal years 2006-07 and 2007-08) of transit operations contract with MV Public Transportation, Inc.
- E-13 Adopted Resolution No. 2005-154 approving the temporary storm drainage basin agreement for Westgate Shopping Center and directed the City Manager and City Clerk to execute the agreement on behalf of the City.
- E-14 "Transmit Draft Short Range Transit Plan and Proposed Service Enhancements and Reductions to Council, open public comment period, and set public hearing to adopt Short Range Transit Plan and Service Enhancements and Reductions for September 7, 2005" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**
- E-15 Adopted Resolution No. 2005-155 appropriating funds for Central Valley Regional Water Quality Control Board PCE/TCE oversight costs for fiscal year 2005-06 in the amount of \$32,000.
- E-16 Adopted Resolution No. 2005-156 authorizing the renewal of IBM Operating System Software for AS400 from Logical Design, Inc., of Rancho Cordova, CA, in the amount of \$31,598.00, and granted the City Manager authority to approve subsequent annual renewals.

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ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

- E-9 "Adopt resolution awarding the request for proposal for the installation and monitoring of an alarm system at Blakely Park pool complex, 1050 S. Stockton Street, to Matson Alarm Co., Inc., of Fresno, CA (\$13,530)"

Council Member Johnson noted that the bid received was twice as high as the engineer's estimate and asked for an explanation.

Steve Dutra, Parks Superintendent, explained that the estimate was based on doing minimal trenching and placing the alarm wiring through the tubing of the chain link fence. The sole bidder would not install the alarm through the fence; however, he does not have trenching equipment or staff, so that aspect of the project would be done by a subcontractor.

In answer to Council Member Hansen, Mr. Dutra stated that the alarm is needed because there is evidence that people are accessing the fenced area after hours. The alarm system will also have sensors in areas that house electrical motors so that water does not damage the motors.

Council Member Johnson and Mayor Pro Tempore Hitchcock were in favor of bidding the project as originally planned (i.e. install alarm through fencing material) to save half the cost.

Council Member Hansen felt that the cost of \$13,000 plus \$40 a month should be justified in terms of problems that have been occurring; however, from the staff report given, there evidently has not been any damage to the facility taking place.

Mayor Pro Tempore Hitchcock commented that some schools have installed cameras, which have deterred or, in some cases, eliminated vandalism. She agreed with Mr. Hansen that the expense for an alarm does not seem justified if there are no specific problems occurring.

City Manager King suggested that this item be pulled from the agenda to allow staff time to further discuss the matter and return to Council at a future date with alternative recommendations.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, unanimously pulled the item from the agenda.

- E-14 "Transmit Draft Short Range Transit Plan and Proposed Service Enhancements and Reductions to Council, open public comment period, and set public hearing to adopt Short Range Transit Plan and Service Enhancements and Reductions for September 7, 2005"

*NOTE: This item was inadvertently pulled from the Consent Calendar by Wali Akbar who wished to speak on Item I-1.*

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Hitchcock second, unanimously received the Draft Short Range Transit Plan and Proposed Service Enhancements and Reductions, opened the public comment period, and set public hearing to adopt Short Range Transit Plan and Service Enhancements and Reductions for September 7, 2005.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- John Giovannoni, Jr. stated that his project at 2111 W. Kettleman Lane (Sunwest Professional Center) is now complete and 100% leased. He has been unable to obtain an interim occupancy certificate from Public Works so that his tenants can move into the building. He explained that there are three power poles on Kettleman Lane, only one of which is on his property, though he is expected to pay costs associated to all three. Mr. Giovannoni asked that he be allowed to put up the \$125,000 and make improvements from that for Pacific Gas & Electric, telephone, and cable utilities.

Council Member Hansen noted that he had spoken to Mr. Giovannoni previously and had suggested he come to the Council meeting to address his concerns. Mr. Giovannoni had received conflicting information from members of City staff. Mr. Hansen asked that staff work to resolve this matter.

- Jack Flockhart stated that there were some intersections on Lodi Avenue that were difficult to maneuver in a wheelchair due to a gap of an inch or more on the sidewalk. He requested that these areas be smoothed out.
- Ed Beswick, Chairman of the Lodi Improvement Committee, stated that the National Night Out event was excellent. While at the event, he heard six concerns from citizens, which he would bring up at the next Committee meeting.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Johnson noted that every police car was in operation during National Night Out and the SWAT van came to one location. He asked that an update be provided on the status of the Youth Commission, as he had heard changes had taken place from its original intended purpose.
- Council Member Mounce commented on the following matters:
  - 1) She was glad to see the Killeleah Substation expansion project moving forward.
  - 2) It had been brought to her attention that there were insufficient policies and procedures at the Animal Shelter, which was creating difficulties for the volunteers.

- 3) She received a call from a resident who expressed concern regarding the high speed of large trucks traveling on Lower Sacramento Road. She asked the Public Works Director to look into the matter.
  - 4) During National Night Out, she heard positive comments about Mayor Pro Tempore Hitchcock from members of the community.
  - 5) She had learned this evening that in Long Branch, New Jersey, the power of eminent domain was being threatened upon owners of beach front property for redevelopment purposes and she questioned how such property could possibly be considered "blighted."
  - 6) During a conference last week, she and Council Member Johnson graduated from the League of California Cities Leadership Academy. She commented that despite a Lodi News-Sentinel article to the contrary, they did not attend the "beach party" during the conference.
- Council Member Hansen announced that a meeting would be taking place on September 8, at which the S.H. Cowell Foundation would be looking at Lodi's east side neighborhood and the Partnership for Families program for potential funding up to \$2 million. He commended Police Chief Adams for the successful National Night Out program, which had 125 neighborhood parties this year. Mr. Hansen reported that he received a call from a businessperson in the 800 block of east Lodi Avenue who owns a repair shop. Customers drop trailers off temporarily on the street in front of the business. Five of the trailers were recently cited for parking on the street; although, the area is posted to allow truck parking. He asked staff to look into the matter.
  - Mayor Pro Tempore Hitchcock reported that Lodi Unified School District began its school year on Monday and of 32 elementary schools only three remain on year-round schedules. Ms. Hitchcock mentioned that she attended National Night Out and rode with Police Captain Noblett, who she stated had excellent public relations skills. She was proud of Lodi's Police force and congratulated Chief Adams for doing a great job in succession planning. While speaking with members of the public, she asked about the water rate increase issue and was surprised that most understood the necessity for it and provided positive feedback. She mentioned that Council recently received an email from a citizen complaining of weeds on Hutchins Street at the entry into Lodi. Though she empathized with the complainant, Ms. Hitchcock stated that it is a byproduct of budget cuts. She felt that Council Member Johnson's earlier suggestion was a good idea, i.e. to enlist the assistance of volunteer groups and civic clubs to adopt certain streets.
  - Council Member Johnson asked for the status of the Partnership for Families' proposal to construct a building at Blakely Park.

Joseph Wood, Interim Community Development Director, reported that the Partnership has preliminary designs for a stand-alone building adjacent to the Lodi Boys and Girls Club. Relocation of the playground area would be necessary. The Parks & Recreation Commission approved the elimination of some green space in order to accommodate the new building. He noted that before contacting the S.H. Cowell Foundation, the Partnership had planned to apply for Community Development Block Grant funds.

- Mayor Beckman wished his wife, Nancy, a happy birthday.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager King introduced Interim City Manager Jere Kersnar and reviewed his background.

I. PUBLIC HEARINGS

- I-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Beckman called for the public hearing to consider the appeal from Noor UI Akbar regarding the requirements of a Notice and Order to Repair for the property located at 511 Alicante (APN 031-200-16).

Joseph Wood, Interim Community Development Director, reported that a single-family dwelling exists on the property at 511 Alicante. In addition, there is a detached garage structure with an addition to the rear that is planned for use as an extended living area of the main dwelling. In April, the Community Development Department received a complaint of un-permitted construction or remodeling. An inspection was conducted and a Notice and Order to Repair was served on the property owner, Wali Akbar, who contested a number of items on the notice. An administrative review was done and several issues were resolved. What is being appealed to the Council are: 1) a lack of an adequate foundation around the addition, and 2) a lack of adequate clearance from grade for the wood framing on the structure. Mr. Wood noted that the addition was done in 1953 with a permit and was intended for use as additional storage or a continuation of the garage space. It was later converted to a conditioned space. Letters from the Planning Department from the 1970s acknowledge its use as a conditioned living space, but clarified that it was not allowed to be a separate unit. Mr. Akbar's position is that the City did not catch these deficiencies on two instances before he became the owner; therefore, he should not be burdened with correcting them now. It has been agreed that other items in the Notice and Order to Repair would be corrected before the unit is occupied, as well as two or three items that were noted during a subsequent inspection made at the property. Because of the close proximity of the wood framing to grade, it has been required that any framing done is replaced with pressure treated materials. The issues regarding the foundation and grade separation are not life threatening; they are substandard conditions, and staff is willing to defer correction for a period of time through the recordation of a notice against the property. The conditions can then be corrected at the time the property is sold or transferred.

Mayor Pro Tempore Hitchcock asked whether there is liability associated with this now that the Council is aware of the substandard conditions.

Mr. Wood explained that it is a situation that, over a very lengthy period time, would affect the overall stability of the structure. He mentioned that case files can now be monitored and calendared electronically for follow up.

City Attorney Schwabauer stated that, if a government entity fails to inspect or act, there is a specific Government Code section that immunizes them, because the liability ultimately flows with the property owner. He did not perceive a significant risk of liability to the City based upon the action Mr. Wood proposes the Council take.

Hearing Opened to the Public

- Wali Akbar stated that he bought the house in 1979 and was not aware of any code violations. He stated that City staff has still not shown him where deterioration has taken place. Also, he mentioned that the breezeway has existed since 1953 and questioned why it should be changed now. Mr. Akbar felt that he should not be penalized now because the City had failed to note deficiencies during previous inspections. He pointed out that if the solution, as staff suggests, is to record a Notice of Substandard Conditions, then it should have been done before.

Public Portion of Hearing Closed

Council Member Mounce stated that she had an opportunity to view the addition to the garage. She was glad to hear that Mr. Akbar would be addressing the fire wall issue, because it will protect the tenant. She noted that the structure would add to the City's stock of affordable housing. She approved of staff's recommendation to record a Notice of Substandard Conditions, as any future buyer of the property would then be aware of the deficiencies.

Mayor Pro Tempore Hitchcock also expressed support for staff's recommendation.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Hitchcock, Hansen second, adopted Resolution No. 2005-157 denying the appeal of Noor Ul Akbar and requiring that two corrections to substandard housing conditions, as called for in the Notice and Order to Repair (i.e. lack of an adequate foundation for the existing addition to the garage structure and lack of adequate separation between earth and wood) at 511 W. Alicante Drive (APN 031-200-16), be deferred through the recordation of a Notice of Substandard Conditions with the San Joaquin County Recorder's Office. The motion carried by the following vote:

Ayes: Council Members – Hansen, Hitchcock, Johnson, and Mayor Beckman

Noes: Council Members – Mounce

Absent: Council Members – None

J. COMMUNICATIONS

J-1 Claims filed against the City of Lodi – None

J-2 The following postings/appointments were made:

- a) "Adjust term (month) expiration date for all Greater Lodi Area Youth Commission representatives and make appointments to the Commission (Student Appointees)" was ***pulled from the agenda.***

J-3 Miscellaneous – None

RECESS

At 8:20 p.m., Mayor Beckman called for a recess, and the City Council meeting reconvened at 8:30 p.m.

K. REGULAR CALENDAR

K-1 "PCE/TCE water rate increase issues"

City Attorney Schwabauer reported that the State of California, through the Water Quality Control Board of the Central Valley, has determined that the City of Lodi is liable for the contamination of perchloroethylene (PCE) and trichloroethylene (TCE) because of the operation of its wells and sewer system. The State has issued an order to the City mandating that it clean up the contamination at its expense. It is a joint order that named several other parties. He noted that if the City were to ignore the order it would be subject to fines and a lawsuit by the State. He pointed out that it is the water citizens drink and if it is allowed to remain contaminated it would eventually get into the water system. Mr. Schwabauer stated that if the City does not clean it up, no one else will, and there is a risk that current and future generations would get cancer. He noted that the City has sued a number of parties who were deemed to be responsible for the contamination and spent millions of dollars on lawyers in an attempt to compel them to pay for the cleanup; however,

it failed. The City spent almost as much in legal fees as the cost is to clean up the contamination. Because the City has been determined by the State to be partially liable, the City has no chance of recovering its attorneys' fees. He explained that the California Regional Water Quality Control Board, the Department of Toxic Substances Control, and the Environmental Protection Agency order others to clean up pollution – they do not have funding for pollution remediation, nor do they offer funding to others for cleanup work.

City Manager King reported that he met with Congressman Pombo and asked whether federal funding could be secured to assist Lodi in cleaning up the groundwater. There is nothing available at this time that the City can count on with any certainty. There is a possibility of some funding available through the National Water Supply Enhancement Act that Congressman Pombo has introduced.

Mr. Schwabauer noted that a number of grant applications have come to staff's attention; however, most have been inapplicable and many would require a great deal of time and effort to obtain and do not generate enough funding to make it worthwhile. He reported that in the Central Plume the City has secured settlements valued at \$7,375,000. This amount will not pay for the entire cost of the cleanup of the Central Plume and does not recover funding taken from the infrastructure replacement program to pay legal bills. The City has secured a settlement in the Busy Bee plume valued at \$500,000, which paid for a "pay for performance" contract. In the Southern Plume, the City has secured a settlement of \$675,000 with the Vanderlans parties. The total Southern Plume cleanup is estimated at \$2.7 million to \$3 million. There are three other parties in the Southern Plume that the City has the ability to recover against. In the South Central Western Plume, the City has secured an interim settlement, in which the parties are paying jointly the cost to study the contamination further and determine the best method to clean it up. These parties have agreed to do \$130,000 worth of work. In the Northern Plume, the parties have agreed to spend \$400,000 to conduct a study. The City has secured a \$9 million settlement from its own insurance carrier. Mr. Schwabauer reported that, in total, the City has recovered nearly \$17 million. Adding past legal fees, future legal fees, the cost of the cleanup, and calculating in the settlements – there remains \$45.7 million needed.

Mayor Pro Tempore Hitchcock commented that she often hears members of the public asking why others are not paying for the cleanup. She noted that the City spent \$25 million in an attempt to do so; however, on January 13, 2004, when the Council terminated its former City Attorney Randall Hays and legal firm Envision Law Group, they had admitted that the City would lose the lawsuit in court and the City would have to pay a portion of the cleanup costs. The Municipal Environmental Response and Liability Ordinance was overturned by the courts. She stated that the cleanup could have been done for half of the \$45.7 million now needed if the City would have accepted the original advice from former City Attorney Bob McNatt who recommended that the City enter into mediation settlements when this matter first became known.

Mr. Schwabauer commented that, in most cases, the businesses the City has been dealing with were small, local businesses that did not have assets to pay for the cleanup. In addition, almost all of their insurance policies contained an exclusion that stated, unless the contamination was both sudden and accidental, the insurance company was not obligated to pay.

Mr. King stated that the proposed remediation program is estimated to cost, on average, \$3 million annually. The cost could be absorbed through the water and wastewater infrastructure replacement fund; however, Mr. King felt that this would be counterproductive because part of the reason the City is in this situation is due to leaking sewer pipes. Another option for paying the cost would be a combination of diverting the water and wastewater infrastructure replacements funds and absorbing some costs in the General Fund. A third option would be solely through the General Fund. A \$3 million annual cost



would mean a 7% impact to the General Fund. Mr. King noted that 29 positions were held vacant to help balance the 2005-06 budget. The General Fund is currently \$5 million short of the minimum amount of money that should be in reserve. He stated that a 7% reduction in the General Fund could result in the following:

- Library – Reduction in hours from 64 to 53, as well as a 10% decrease in new library materials;
- Public Works – Elimination of program to clean the downtown area and graffiti abatement, reduction in vehicle and fleet maintenance, landscape maintenance, street pavement maintenance, and clerical support;
- Fire Department – Elimination of six positions;
- Community Center – Cancellation of art grant program, elimination of staff for the Youth Commission, and cancellation of the Art Hop and Celebrate American events;
- City Clerk – Electronic records management program would be negatively impacted and the project to conduct in-house codification of the Lodi Municipal Code would be terminated;
- City Manager – Elimination of economic development activities, delay in assistance and follow up to citizen complaints, and a reduction in community support programs;
- Parks & Recreation – Special programs would be put on hold; reduction in tree maintenance and support for School District events;
- Police Department – Reduction in bike patrol, traffic unit, school resource officers, and special investigations detective.

Public Works Director Prima reiterated that the net cost of completing the groundwater contamination remediation is \$45.7 million. The amount includes 30 years of maintenance and operation costs on the equipment that will be installed. It also takes into account the settlements the City has received and estimates of what it anticipates to receive in the future. Also included is reimbursement for the \$12.2 million in past expenses deducted from the water and wastewater funds. With the assistance of the financial planning firm, Bartle Wells Associates, staff is recommending a modified, smooth, pay-as-you-go approach with stepped in rate increases relying on the water fund to bear the cost of PCE/TCE cleanup. A three-bedroom home customer would have a rate increase of \$3.50 in January 2006, an additional \$3.50 increase in July 2006, and a third increase of \$3.50 in July 2007. An annual cost of living adjustment (based on the Consumer Price Index) would also be included. Mr. Prima reported that PCE/TCE is in the soil as well as the groundwater. Some buildings in the downtown area have been monitored and vapor levels have been found that are unacceptable and need to be mitigated. In the groundwater, there are a number of locations where samplings have found results that were thousands of times above the standard acceptable level. The groundwater under the City is all interconnected. Currently, none of the operating wells exceed the standard for PCE/TCE levels. Mr. Prima briefly explained the various contamination removal methods of soil vapor extraction, sparging, and groundwater extraction. He displayed maps that showed contamination plume areas. He confirmed that costs related to the PCE/TCE cleanup would be tracked in a separate fund so it could be monitored and reported to Council. A minimum of 15% combined reserve in the water fund needs to be maintained. He showed charts of the water fund account, as projected with and without the rate increase. Mr. Prima stated that the most common complaint he has received is that it is unfair to charge a water rate based on the number of bedrooms in a housing unit. He displayed charts of eight apartment units and 16 residences with water meters, which showed a substantial variation in water usage.

In response to questions posed by Council Members, Mr. Prima reported that a number of water meters will be purchased and installed this year. The usage will be monitored and staff will calculate a residential metered rate for water. Since 1986, the City has been installing services on homes that are ready to take a water meter. In 1993, the City began charging new developments for the cost of meters and so far has collected \$700,000 for this

purpose. Services installed prior to the 1980s are not ready to take a meter and will need to be dug up, re-plumbed, and the water meter installed – at a cost of approximately \$300 for the meter and \$1,200 for the connection. The connection work for 540 units has been done as part of the infrastructure replacement program. If water meter implementation is done over the course of 20 years, the City can handle the service line replacements through the infrastructure program and charge customers only for the water meters; however, that would be a future decision for the Council to make.

Mr. Schwabauer reported that the City borrowed \$15,750,000 from Lehman Brothers and spent the money on legal fees. The interest rate was 25%, which added up to \$32 million. The City settled with Lehman for \$7.9 million, so it did not pay any interest on the loan nor did it repay all the principle that it used. Lehman Brothers was paid from USF&G (the City's insurance company) recoveries and \$6 million of this payment is part of the net amount of \$45.7 million.

Mr. King stated that notices will be mailed this week to property owners advising them of the public hearing on September 21 and their right to protest the proposed rate increase. Direction is needed from the Council related to how the protest should be calculated.

In reply to Mayor Beckman, Mr. Prima reported that within the next five years staff anticipates having a clear understanding of what the costs are going to be and will be able to project more accurately into the future. It is hoped that the rate amount could be adjusted downward at that time.

Mr. Schwabauer added that the resolution to approve the rate increase will include a section stipulating that staff will report to Council every five years regarding the actual revenues and expenses of the remediation program.

Council Member Hansen noted that the Low Income Discount program is also factored into the water rate increase.

PUBLIC COMMENTS:

- Walter White was opposed to the inequitable practice of charging water rates according to the number of bedrooms, rather than by actual usage. He favored charging according to the number of people living in a home or through water meters. He felt that revenue derived from new property taxes should pay for the contamination cleanup, rather than ratepayers. Mr. White stated, however, that after listening to the presentation this evening, he would not protest the water rate increase.
- Bill Crow expressed opposition to the water rate increase. He recalled that rates were just increased in April 2004. He believed there should be a more equitable way for charging for water and felt that the ratepayers should not have to pay for mistakes made by others.
- Barbara Flockhart recalled that 20 years ago she came before Council and asked that something be done about the Orangeburg pipe pollution on the eastside. She explained that this type of pipe collapses and the pollution spreads. At that time, the Council did not believe it was important and declined to take action. She did not feel that new development in Lodi was paying its fair share. She opposed the proposed water rate increase and believed that an increase in other services such as electricity would soon follow.
- Mike Mamoulelis stated that items of interest to the public should be placed at the beginning of the City Council agendas, so that people who wish to speak do not have to wait for extended periods of time. He felt that the City Council and other officials should have been more vigilant about what was occurring regarding the lawsuit

undertaken by former counsel. He asked if other avenues have been fully considered to get needed funds for the cleanup.

- Dean Meier indicated that further analysis of funding options would be helpful and suggested that graphs be superimposed so that each alternative could be compared.

Council Member Hansen summarized that mistakes were made, they were admitted, and now it is time to move on. He recalled that, over the past two and a half years, the Council has worked hard to resolve this matter. Hundreds of hours have been spent in negotiations, court rooms, and meetings trying to find the best possible solution. A plan is now in place to accomplish the PCE/TCE cleanup. He objected to a headline in today's Lodi News-Sentinel that said Lodi's water rate would be one of the highest in the state in two years, as that projection is impossible to know. He reported that Mr. Prima had written a memorandum in 1978 that recommended Lodi consider replacing its aging sewer lines. Unfortunately, it was acted upon and has contributed to the difficult situation Lodi now faces. In reference to water meters, he believed that many people would be shocked at the amount of water they actually use because of leaking irrigation, household plumbing, etc.

Council Member Mounce expressed concern for low-income individuals. She favored a 20% discount as well as exemptions for hardship. She felt that all ratepayers should be able to vote on the matter.

Mr. Prima noted that in homes where bedrooms have been converted to another use, the billing can be adjusted accordingly.

In response to Council Member Hansen's earlier statement, Mayor Pro Tempore Hitchcock noted that she spent the last six and a half years trying to change the course being taken and work toward resolution. She stated that, *"the best way to avoid future battles is not to rewrite history, but to remember the war."*

#### MOTION #1:

Council Member Mounce made a motion, Beckman second, to allow property owners and ratepayers (e.g. tenants) to protest/vote on the proposed water rate increase to be considered on September 21, 2005.

#### DISCUSSION:

Council Member Hansen recalled that only property owners were allowed to submit protests the last time this process was conducted in April 2004. There were approximately 18,000 property owners at that time. He pointed out that the base number will increase if all ratepayers are allowed to submit protests, which makes a majority vote even more difficult to obtain.

City Attorney Schwabauer stated that Proposition 218 is complicated, conflicted, and does not provide adequate direction for him to determine and definitively advise Council on the correct way to proceed. He stated that there are three directions that can be taken and all of them are equally defensible: Accept protests from 1) property owners only, 2) all ratepayers, or 3) per parcel (fractionalized) votes from property owners and renters. Proposition 218 states that notices are to be sent to all persons owning real property as shown on the last equalized assessment roll.

Council Member Hansen pointed out that if a property owner in the area of the contamination was in favor of the rate increase to ensure the cleanup is funded and chose not to file a written protest, but rented the property to someone against the rate increase who did file a protest – by accepting the renter's vote it would override the property owner's rights. He noted that homeowners pay property taxes, have an investment in the community, and Proposition 218 specifically states that the notice is to be sent to property owners.

In response to Council Member Johnson, Mr. Schwabauer acknowledged that, as recently as last year, many jurisdictions would not have applied Proposition 218 to a water rate increase; however, that view is changing due to a California Supreme Court case.

Council Member Johnson stated that because Proposition 218 is clear about sending notices to property owners, he favored counting written protests only from them.

Mayor Beckman felt that either way of accepting protests seemed reasonable.

VOTE:

The above motion **failed** by the following vote:

Ayes: Council Members – Mounce and Mayor Beckman

Noes: Council Members – Hansen, Hitchcock, and Johnson

Absent: Council Members – None

MOTION # 2 / VOTE:

The City Council, on motion of Council Member Johnson, Beckman second, voted to proceed with the Proposition 218 notice to property owners regarding the September 21, 2005 public hearing to consider proposed water rate increase and to allow only property owners to protest/vote on the matter. The motion carried by the following vote:

Ayes: Council Members – Hansen, Hitchcock, Johnson, and Mayor Beckman

Noes: Council Members – Mounce

Absent: Council Members – None

K-2 "Adopt resolution regarding City vote on property assessment ballot for City property within the Central Delta Water Agency"

Public Works Director Prima stated that the Central Delta Water Agency covers the central portion of the San Joaquin Delta. It is conducting a Proposition 218 assessment proceeding in which ballots are accepted. They are proposing to increase an existing property assessment from \$5 to \$8 per acre. Lodi's 1,000 acres of White Slough property is within the district. The district's primary role is in lobbying and litigation on behalf of the properties in the district and it is focused on Delta water issues. He suggested that a "no" vote be cast.

MOTION / VOTE:

The City Council, on motion of Council Member Johnson, Beckman second, unanimously adopted Resolution No. 2005-158 submitting a "No" vote on property assessment ballot for City property within the Central Delta Water Agency.

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:00 p.m.

ATTEST:

Susan J. Blackston  
City Clerk